

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CENGAGE LEARNING, INC. et al.

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 24-cv-04274-JLR-BCM
[Redacted]
[Confidential Information Highlighted in
Yellow]

ATTORNEY DECLARATION OF
JEFF KANE

1. I am an attorney at the law firm Oppenheim + Zebtrak, LLP (“O+Z”), counsel for all Plaintiffs in this matter. I submit this declaration in support of Plaintiffs’ Letter Motion to Compel.

2. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently hereto.

Ads Google Ran for Pirates Google Claims to Have Terminated

3. I reviewed data provided by Plaintiffs’ vendor listing Google Shopping ads that were the subject of infringement notices that Plaintiffs sent to Google. PL0000543994; PL0000535577. I likewise reviewed data that Google produced concerning Merchant Center accounts/domains that Google claims to have suspended. GOOG-CENG-00000703; GOOG-CENG-00392941; GOOG-CENG-00392942.

a. I counted more than 1,600 instances in which Google claims to have terminated all of the Merchant Center accounts associated with a particular domain by a date prior

to September 16, 2024, and yet Plaintiffs' vendor observed an ad for that domain *after* September 16, 2024.

b. Google's data indicates that [REDACTED]

[REDACTED]

Google Shopping Filters

4. I have observed that Google's Shopping platform sometimes provides users with a "Textbook Link" feature that allows the user to filter Shopping results to display textbooks.

Google's Policy of Not Processing Infringement Notices from Certain Rightsholders

5. In meet-and-confers, Google claimed that information concerning whether Google stopped processing Shopping ads infringement notices from any rightsholder is burdensome to produce, but Google did not claim that it had actually investigated how the search would be conducted. I provided a number of suggestions for how Google could conduct its search, including using a [REDACTED] and searching for the language that Google communicates to rightsholders regarding duplicate notices. Google has not reported that it has looked into any of these options for locating responsive documents.

6. In a June 2, 2025 meet-and-confer, and in its objections to RFP 74, Google agreed to produce information showing whether Google ever stopped processing *Plaintiffs'* notices.

Custodians

7. On several occasions, Google represented that it does not maintain organizational charts, and even declined to say whether it possessed a list of employees who work in various departments. 25.07.14 Google's Responses and Objections to Plaintiffs' Third RFP, No. 91; 24.11.05 Latham Email; 24.11.04 O+Z Email; 24.10.25 Meet-and-Confer; 24.10.22 O+Z Email; Latham 24.10.21 Email.

8. The data Google has produced thus far [REDACTED]

[REDACTED]

[REDACTED].¹

9. [REDACTED]

[REDACTED].

10. Plaintiffs identified to Google 33 individuals who are listed in Google's documents as processing Plaintiffs' infringement notices concerning the pirates at issue in this suit. O+Z 25.06.17 Email.

11. I reviewed Google's Notice and Response Data Spreadsheets and observed the following.

a. [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ [REDACTED] GOOG-CENG-00380265, GOOG-CENG-00380266, GOOG-CENG-00380267, GOOG-CENG-00380268, GOOG-CENG-00392939, GOOG-CENG-00392940, GOOG-CENG-00403539, GOOG-CENG-00403540, GOOG-CENG-00403541, GOOG-CENG-00403542, GOOG-CENG-00403543, GOOG-CENG-00403544, GOOG-CENG-00403545, GOOG-CENG-00404296) ("Notice and Response Data Spreadsheets").

d. [REDACTED]
[REDACTED]

12. I reviewed a spreadsheet Google produced that Google’s counsel informed me is the mechanism Google uses [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13. I understand that John Caleb Donaldson and Adam Crider participated in an hour-long call on December 16, 2020 with Plaintiffs’ counsel and other Google personnel concerning the problem of Shopping Ads for pirated textbooks. Google must collect and review documents from these custodians.

14. Attached as Exhibit 1 is a document Google produced bearing Bates number GOOG-CENG-00413875. Attached as Exhibit 2 is a document Google produced bearing Bates number GOOG-CENG-00404715.

Google’s [REDACTED] System

15. From the documents Google has produced so far, it is clear that some, but not all, discussions and information in the “[REDACTED]” is regenerated in emails. During a meet-and-confer on August 5, 2025, counsel for Google did not know what causes content from the [REDACTED] to be circulated in an email. Thus, it appears that sometimes the [REDACTED] sends a “notification” email copying and pasting a discussion posted on the [REDACTED] and sometimes it does not.

The Date Google's DMCA Policy was Created/Implemented

16. During a June 13, 2025 meet-and-confer, Google admitted that the people it named in response to Plaintiffs' Interrogatory No. 1 were not necessarily the people involved in designing or developing the policy; they were simply people who, at some point from December 2020 onwards, had knowledge about the design and development of the policy. Plaintiffs' Interrogatory 1 reads: ("State the name of each person with responsibility for designing, developing, or implementing Your Copyright Infringement Policies (including Your DMCA Policies), along with the persons' role at or with Defendant when, and the dates during which, they had such responsibility.").

Executed August 5, 2025, in Washington, D.C.

/s/ Jeff Kane
Jeff Kane